IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Criminal Action No. 03-21-SLR
	)	
TAUCHI MITCHELL,	)	
	)	
Defendant.	)	

MEMORANDUM ORDER

I. INTRODUCTION

Defendant Tauchi Mitchell moves to suppress all evidence and statements taken on October 1, 2002. (D.I. 15) An evidentiary hearing was held on June 13, 2003, with one witness testifying. (D.I. 24) Post-hearing briefing is complete. (D.I. 26, 27, 28) The court has jurisdiction pursuant to 18 U.S.C. § 3231. For the reasons that follow, defendant's motion to suppress is denied.

II. BACKGROUND

Pursuant to Federal Rules of Criminal Procedure 12(e), the following constitutes the court's essential findings of fact. Sergeant William Browne ("Browne"), an 18 year veteran police officer with the Wilmington Police Department, was on duty on October 1, 2002. (D.I. 24 at 5) At about 8:45 a.m., the police radio broadcast a report that a shooting victim ("victim") had just arrived at Wilmington Hospital. (Id. at 6) The female victim had been transported to the hospital by a passing motorist

("witness"). The victim had flagged down the motorist's car on the 500 block of North Monroe Street, Wilmington. (Id. at 8) The victim asked to be taken to a hospital because she had just been shot. (Id. at 7) At the hospital, the victim spoke briefly with police but was medicated before any additional information was obtained. (Id. at 6)

In response to the incident, Browne ordered patrol officers to investigate the 500 block of Monroe Street. (Id. at 8-9) Browne and Detective Ralph Hauck also responded to the area. They searched the sidewalk where the witness indicated the victim had been standing. Officers discovered drops of blood on the sidewalk and located a drop of fresh blood on the steps of a residence, 528 North Monroe Street ("residence"). (Id. at 9, 53) While officers searched the entire block for more drops of blood, their search proved fruitless. (Id. at 10)

At the front of the residence, Browne knocked on the door. (Id. at 10) The force of the knock caused the door to open slightly and enabled Browne to look inside the residence. Id. at 10, 50) Just inside the doorway, Browne saw another drop of blood. (Id. at 10) Browne called out and identified himself as a police officer. (Id.) No one responded. Browne could see there was no one in the immediate living space, however, the drop of blood made him fear that there might be injured people in other parts of the residence. He ordered officers inside the

residence to investigate. After a brief cursory search revealed no one inside, officers secured the residence and Browne left to prepare a search warrant. (Id. at 11, 73; GX 1)

Later that same day, a daytime search warrant for the residence was issued by a justice of the peace. (GX 1) Although the search warrant clearly identified 528 North Monroe as the location for the search, in two paragraphs of the supporting affidavit the location of the proposed search as "528 North Madison Street". (GX at 0014) Browne indicated the reference to Madison instead of Monroe Street was an inadvertent mistake. Browne further clarified that his affidavit describes the blood drops as a blood trail. (Id.)

The search of the residence was accomplished in about an hour. (Id. at 16) Ammunition of varying calibers was seized. (Id. at 15) After the search, Browne returned to police station to continue the investigation. At that point, defendant was not a suspect.

Around one o'clock that afternoon, defendant and his girlfriend arrived at the police station. (Id. at 17) They came voluntarily and waited in the lobby for fifteen minutes before speaking with Browne and Hauck. (Id. at 19) In front of his girlfriend and without hesitation, defendant agreed to speak, alone, to Browne and Hauck. Defendant was placed in an interview

room, while Hauck questioned the girlfriend separately. (Id. at 20)

Inside the interview room was a steel bench, table and two chairs. (Id. at 20) Defendant was unrestrained and seated on the bench with Browne and Hauck seated across from him in the chairs. Although small, the room was well-light and ventilated. Defendant told Browne that he had been taking Xanax, smoking crack cocaine and sniffing heroin earlier in the day. (Id. at 65) Despite defendant's admitted drug use, Browne did not observe any unusual speech or behavior by defendant. (Id. at 30-31) Browne verbally advised defendant of his Miranda rights. (Id. at 21) A Miranda waiver form was not used. Defendant told Browne that he understood, affirmatively waived his rights and agreed to speak with Browne without an attorney present. (Id. at 22-23) Defendant explained that the victim was shot after she had tried to rob him. (Id. at 24; GX3) When defendant resisted, the gun fired, wounding her. She then fled the residence. The interview lasted 20 minutes. (Id. at 27)

III. DISCUSSION

A. Exigent Circumstances

A presumption of unreasonableness attaches to all warrantless home searches. See Welsh v. Wisconsin, 466 U.S. 740 (1984); Wong Sun v. United States, 371 U.S. 471, 479 (1963). It is the government's burden to demonstrate exigent circumstances

to justify the entry. Sharrar v. Felsing, 128 F.3d 810, 820 (3d Cir. 1997); McDonald v. United States, 335 U.S. 451, 456 (1948)(a warrantless search can be conducted if supported by probable cause and exigent circumstances exist).

The United States Supreme Court has identified four types of exigent circumstances: 1) evidence is in imminent danger of destruction, Cupp v. Murphy, 412 U.S. 291 (1973); 2) the safety of the general public or law enforcement is in danger, Warden v. Hayden, 387 U.S. 294 (1967); 3) a suspect is likely to flee before a warrant can be obtained, Minnesota v. Olson, 495 U.S. 91 (1990); and 4) the police are in hot pursuit of a suspect, United States v. Santana, 427 U.S. 38 (1976). In evaluating exigent circumstances, a court reviews the objective facts reasonably known to the officers at the time of the search using the totality of the circumstances facing the officers when the search was performed. Illinois v. Gates, 462 U.S. 213, 232 (1983).

The uncontradicted testimony of Browne provides credible justification for the entry into the residence without a warrant. Specifically, there had been a shooting in a definite area that had caused the victim to require hospitalization. An immediate search of the area where the victim had been found revealed drops of fresh blood. The blood led to the steps of the residence where another drop of blood was located. Despite a comprehensive

search of the vicinity, no other blood drops were found. The accidental opening of the door to the residence, revealed another drop of fresh blood. The court finds that this sequence of events would cause an officer to objectively believe that someone inside the residence might be in imminent danger and, accordingly, the entry into the residence to avert the danger were appropriate. See Parkhurst v. Trapp, 77 F.3d 707, 711 (3d Cir. 1996); United States v. Velasquez, 626 F.2d 314, 317 (3d Cir. 1980).

B. Warrant

Defendant argues the affidavit filed in support of the search warrant contained materially false and misleading information because Browne wrote the wrong address in various portions of the supporting affidavit. (D.I. 26; GX1) Defendant also asserts that the use of the phrase "blood trail" in the affidavit was an intentional falsehood included to convince the magistrate to issue the warrant on facts that otherwise would not have been so compelling.

An affidavit supporting a warrant is presumed valid. See Franks v. Delaware, 438 U.S. 154, 171 (1978). The inclusion of false evidence in an affidavit, alone, does not taint a warrant or the evidence seized pursuant to the warrant. See United States v. Herrold, 962 F.2d 1131, 1138 (3d Cir. 1992). Instead, a reviewing court should separate the alleged falsity from the

rest of warrant affidavit to determine whether there remains sufficient content to support a finding of probable cause. Franks, 438 U.S. at 171.

Browne testified that he mistakenly wrote Madison Street instead of Monroe Street in a few paragraphs of his affidavit. (D.I. 24 at 38-39) The court finds Browne's explanation credible and plausible that it was a mere typographical error. Moreover, there was nothing presented that established the transposition was made knowingly, intentionally or with reckless disregard for the truth. Franks, 438 U.S. at 171.

With regard to the description of the "blood trail", the court finds this representation appropriate and not a knowing, intentional or reckless disregard for the truth. Id. The discovery of fresh blood spots on the sidewalk, steps leading to the residence and inside the residence is unrefuted. Having found Browne's statement was not false, it is unnecessary to excise this evidence from the affidavit to assess the presence of probable cause. Id.

C. Statements

It is well-settled that the government may not present statements in its case-in-chief collected during custodial interrogation by law officers unless defendant has been advised of, and validly waived, his Miranda rights: 1) to remain silent and that any statements can be used as evidence against him; and

2) to the presence of retained or appointed counsel during questioning. See Miranda v. Arizona, 384 U.S. 436, 444 (1966).

Defendant asserts that the government has failed to demonstrate that he knowingly and intentionally waived his Miranda rights before providing a statement. (D.I. 26) The record reflects defendant went to the police station to speak with officers about the shooting. At the time, defendant was neither a suspect in the shooting nor was he being sought by police for questioning. Because police were not immediately available to speak with him, defendant had to wait and did so voluntarily, in a waiting area with his girlfriend. Before his interview began, defendant advised Browne that he had been using drugs earlier that day. Notwithstanding this revelation, Browne, did not notice any signs of impairment from the drug use.

Although the presence of a clearly worded and executed waiver form would render this issue moot, the absence of such a form does not void the waiver of Miranda rights herein. The court credits Browne's testimony as credible and as an accurate reflection of defendant's understanding and waiver of Miranda protections. In so doing, the court notes that defendant has presented neither evidence nor testimony to cast doubt on the testimony of the officer.

IV. CONCLUSION

At Wilmington this 20th day of August, 2003;

IT IS ORDERED that:

1. Defendant's motion to suppress (D.I. 15) is **denied.**

2. The court will initiate and conduct a telephonic status conference on **Thursday, September 11, 2003 at 9:00 a.m.**

3. The time between this order and the September 11, 2003 teleconference shall be excluded under the Speedy Trial Act in the interests of justice. 18 U.S.C. § 3161(h)(8)(A).

Sue L. Robinson
United States District Judge